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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/771,595	01/30/2001	Peter Hossel	51186	8957
26474 7590 04/16/2007 NOVAK DRUCE DELUCA & QUIGG, LLP 1300 EYE STREET NW SUITE 1000 WEST TOWER WASHINGTON, DC 20005			EXAMINER LAMM, MARINA	
			ART UNIT	PAPER NUMBER
			1617	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/16/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

09/771,595

Applicant(s)

HOSSEL ET AL.

Examiner

Marina Lamm

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 9-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 9-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.  | 6) <input type="checkbox"/> Other: ____.                          |

### **DETAILED ACTION**

In view of the BPAI decision dated 12/21/06, the prosecution has been re-opened.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4 and 9-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dieing et al. (EP 0 893 117, translation) in view of either Dupuis et al. (US 5,553,63), of record, or Eteve et al. (US 5,643,557).

Dieing et al. teach cationic crosslinked polymers for use in cosmetic compositions, in particular in hair care compositions such as hair lotions, rinses, emulsions, sprays and shampoos, said polymers comprising 1-99.99% of a cationic or quaternized monomer such as 3-methyl-1-vinylimidazolium methyl sulfate and 0-98.99% of a water-soluble monomer such as N-vinylpyrrolidone. See Translation at pp. 4-6. N,N'-divinylethylenurea can be used as a crosslinking agent. See Translation at p. 5; p. 7; Example 3. The polymers of Dieing et al. are obtained by the same method of free-radical initiated solution polymerization as recited in the instant claims. See Translation at p. 5. Dieing et al. teaches that along with the polymers and solvents, the cosmetic hair preparations can also contain conventional cosmetic ingredients. See Translation at

p. 6. Dieing et al. do not explicitly teach the UV filters of the instant claims. However, Dupuis et al. teach using coated or uncoated metallic oxide pigments (e.g. titanium dioxide, zinc oxide, cerium oxide or zirconium oxide) having an average size of less than 100 nm in haircare cosmetic compositions for the protection of hair keratin against sunlight. See Abstract; col. 1, lines 13-17, 30-65; col. 2. The compositions of Similarly, Eteve et al. teach using coated or uncoated metallic oxide pigments (e.g. titanium dioxide, zinc oxide, cerium oxide or zirconium oxide) having an average size of less than 100 nm in haircare and skincare compositions for the protection of epidermis or hair against UV rays. See Abstract; col. 1, line 59 – col. 3, line 65. The compositions of both Dupuis et al. and Eteve et al. may contain conventional organic UV sunscreens. See Examples. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the hair care compositions of Dieing et al. such that to employ inorganic UV filters of either Dupuis et al. or Eteve et al. One having ordinary skill in the art would have been motivated to do this to obtain compositions that would protect hair from UV radiation as suggested by either Dupuis et al. or Eteve et al.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

### ***Conclusion***

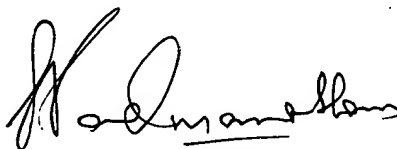
3. No claims are allowed at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (571) 272-0618. The examiner can normally be reached on Fri from 11am to 7pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, can be reached at (571) 272-0629.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Marina Lamm, M.S., I.D.  
Patent Examiner  
4/6/07

  
SREENIVASAN PADMANABHAN  
SUPERVISORY PATENT EXAMINER